

REMARKS

The present Amendment is in response to the Official Action mailed January 30, 2007. Claims 1, 10, 14, and 16 have been amended. Claim 6 has been cancelled. Therefore, claims 1-5 and 7-20 remain pending in the application. The following sets forth Applicants' remarks regarding the Official Action.

As an initial matter, Applicants respectfully thank the Examiner for pointing out that dependent claim 6 was merely objected to as being dependent upon a rejected claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants have amended independent claim 1 to incorporate the allowable subject matter of dependent claim 6, and canceled such dependent claim accordingly. In addition, Applicants have incorporated the allowable subject matter of dependent claim 6 into independent claim 10, and respectfully submit that such amendment thereby similarly moves that independent claim into a condition of allowance. As dependent claims 2-5, and 11-15 depend from allowable independent claim 1 or allowable independent claim 10, such claims also, in Applicants' opinion, constitute allowable subject matter. A dependent claim is necessarily narrower than an independent claim from which it properly depends. Thus, Applicants believe that claims 1-5 and 10-15 should be moved into a condition of allowance, and will not further discuss any of these claims in the present response.

With regard to the Examiner's objection of the disclosure of the present application, Applicants respectfully direct the Examiner's attention to the discussion set forth in column 11, lines 6-46. In that discussion, it is clear that the distal placement trials vary not only in thickness, but also in their oval footprint. Specifically, distal placement trials with an oval footprint being 12mm x 14mm, 15mm x 16mm or 16mm x 18mm and having depths (i.e., thicknesses) ranging from 6mm to

14mm in 1mm increments are specifically discussed. The Examiner's confusion relating to the different head square areas set forth in dependent claim 14 is clearly explained in this section. In other words, it is specifically contemplated in the present invention that trials having different thicknesses or the same thickness may include footprints of different areas. Clearly, a footprint of 12mm x 14 mm has an area of 168mm² while a footprint of 14mm x 16mm has an area of 224mm². The application clearly contemplates both different footprints, among others, having different thicknesses, as well as different footprints having the same thickness.

Applicants respectfully submit that the foregoing discussion clears up any misconception that the Examiner may have regarding the application and specifically points out that no amendment of either dependent claim 13 or dependent claim 14 (save for a minor correction of spelling in dependent 14) is required in order to make either claim proper under the rules.

Turning now to the substance of the Official Action, the Examiner has rejected claims 1-4 and 10-15 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,063,725 to Foley ("Foley"), claim 5 under 35 U.S.C. § 103(a) as being obvious over Foley, and claims 7-9 under 35 U.S.C. § 103(a) as being obvious over Foley in view of U.S. Patent Publication No. 2003/0135279 to Michelson ("Michelson"). Essentially, it is the Examiner's opinion that Foley discloses each and every one of the limitations of the claims, except for the subject matter of dependent claim 5, which the Examiner believes to be obvious in view of Foley, dependent claims 7-9, which the Examiner believes to be obvious over the combination of Foley and Michelson, and dependent claim 6, which, as discussed above, the Examiner believes to constitute allowable subject matter. Because the allowable subject matter of dependent claim 6 has been incorporated into both independent

claims 1 and 10, Applicants need only address the rejections of claims 7-9 and 16-20.

These two sets of claims include pending independent claims 7 and 16, which both, either as originally filed or as amended herein, include the limitation of stop member capable to prevent over-insertion of the head of the replacement trials into the intervetebral space of the spinal column. The Examiner acknowledges that Foley does not teach a stop member which operates in this manner. However, the Examiner cites Michelson as teaching the use of a stop member in a device, and asserts that incorporating the stop member of Michelson into the trial device of Foley would have been obvious to one of ordinary skill in the art at the time of the present invention. Applicants respectfully disagree with the Examiner's assertions, and point out that Michelson includes a stop member associated with an insertion device for inserting a spinal implant. The use of a stop member in this context is rather common, so as to ensure the proper alignment and placement of a spinal implant between two adjacent vertebrae. In the present case, the stop member is being associated with a trial. There is simply no disclosure in any of the prior art of record showing a trial incorporating such stop member. One of ordinary skill in the art would not necessarily look to insertion devices, as the use of such an insertion device is quite different than that of a trial. In addition, insertion devices employing a stop member typically utilize the stop member to provide an opposite force against the vertebrae to that of the implant being inserted between such vertebrae. Thus, once again, Applicants assert that one of ordinary skill in the art would not look to insertion devices when designing a vertebral disc replacement trial or set of trials like that of the present invention.

Therefore, Applicants respectfully submit that independent claims 7 and 16 are not obvious in view of Foley and

Michelson. In fact, Applicants assert that such independent claims constitute allowable subject matter. Given that dependent claims 8, 9, and 17-20 are dependent upon one of independent claim 7 or independent claim 16, allowance of such claims is also respectfully requested.

In light of all of the above, Applicants respectfully submit that claims 1-5, and 7-20 constitute allowable subject matter, and respectfully solicit a Notice of Allowance in connection with the present case.


As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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